

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**ALLSTATE PROPERTY AND CASUALTY INSURANCE COMPANY,
RESPONDENT
vs.**

**KENNETH DAVIS III, A MINOR CHILD, BY AND THROUGH HIS GUARDIAN, DIXIE
MAE DAVIS,
APPELLANT**

DOCKET NUMBER WD75439

DATE: JULY 23, 2013

Appeal from:

The Circuit Court of Boone County, Missouri
The Honorable Mary "Jodie" Asel, Judge

Appellate Judges:

Division Three: Cynthia L. Martin, P.J., Joseph M. Ellis and Gary D. Witt, JJ.

Attorneys:

Mark D. Chuning, for Respondent

Thad R. Mulholland, for Appellant

MISSOURI APPELLATE COURT OPINION SUMMARY

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WESTERN DISTRICT

ALLSTATE PROPERTY AND CASUALTY INSURANCE COMPANY, RESPONDENT

v.

KENNETH DAVIS III, A MINOR CHILD, BY AND THROUGH HIS GUARDIAN, DIXIE
MAE DAVIS, APPELLANT

WD75439

Boone County, Missouri

Before Division Three Judges: Cynthia L. Martin, P.J., Joseph M. Ellis and Gary D. Witt, JJ.

On September 4, 2009, Appellant Kenneth Davis III sustained bodily injuries after being struck by Javan Simpson ("Simpson"). The vehicle driven by Simpson at the time of the accident was insured by Allstate Property & Casualty Insurance Company ("Allstate") under a policy ("the Policy") issued to Simpson's parents, who owned the vehicle. Because Simpson resided with his parents and had their permission to use the vehicle at the time of the accident, Allstate was required to and did provide the Policy limits of \$50,000 in bodily injury liability coverage to Simpson for Appellant's injuries resulting from the accident.

Appellant contended, however, that under the Missouri Motor Vehicle Financial Responsibility Law ("MVFRL"), Allstate was obligated to provide additional coverage under the Policy on the theory that the Policy insured Simpson separately as a non-owner operator. Appellant based this theory on the fact that Simpson was listed as a driver on the Policy's declarations page. Allstate refused to pay any additional coverage under the Policy and filed a petition for declaratory judgment requesting the circuit court determine whether the MVFRL required Allstate to provide additional coverage to Simpson as an operator under the Policy. After cross-motions for summary judgment were filed, the circuit court granted Allstate's motion for summary judgment, determining Allstate had satisfied its obligations under the Policy by entering into the settlement agreement with Appellant for \$50,000.

Appellant now appeals from the circuit court's grant of summary judgment. He contends that the MVFRL and the Missouri Supreme Court's decision in ***Karscig v. McConville***, 303 S.W.3d 499 (Mo. banc 2010), mandate that Allstate pay an additional \$50,000 of stacked coverage on the theory that the Policy insured Simpson separately as a non-owner operator.

AFFIRMED

Division Three holds:

(1) The circuit court did not err in granting summary judgment in favor of Allstate in that the Supreme Court's decision in *Karscig* and the MVFRL do not require Allstate to provide additional coverage to Simpson as a non-owner operator under the Policy. The Court in *Karscig* addressed whether the MVFRL required an insurance company to provide coverage when a negligent driver was insured by *multiple policies*, one of which the Court determined was an operator's policy, which thereby required the insurance company to pay the requisite minimum liability coverage of \$25,000 for operator's policies under the MVFRL. In the case presently at bar, however, there is no separate operator's policy at issue that would require Allstate to provide the minimum liability coverage for operator's policies under the MVFRL. Rather, this case involves a single policy issued to Simpson's Parents under which Allstate has already provided the minimum liability coverage for Appellant's bodily injuries. Accordingly, the MVFRL does not require Allstate to provide any additional coverage under the Policy.

Opinion by Joseph M. Ellis, Judge

Date: July 23, 2013

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